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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,080	10/29/2003	Gerard J. Matern	LGPL.110510	5934
5251 7590 01/11/2007 SHOOK, HARDY & BACON LLP INTELLECTUAL PROPERTY DEPARTMENT 2555 GRAND BLVD KANSAS CITY, MO 64108-2613			EXAMINER KRAUSE, JUSTIN MITCHELL	
			ART UNIT 3682	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/696,080

Applicant(s)

MATERN ET AL.

Examiner

Justin Krause

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12, 14-21 and 23-30 is/are rejected.  
7) ☒ Claim(s) 22 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's claimed language that the protuberance and the indentation form a perpetual join is inaccurate. Applicant claims the protuberance is in constant contact with the indentation, however as clearly shown in figure 2b, the protuberance is separated from the indentation.

***Double Patenting***

Applicant is advised that should claim 26 be found allowable, claim 1 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 23-30 are rejected under 35 U.S.C. 102(b) as anticipated by Miotto (US Patent 6,213,552).

Miotto discloses a chair adjustment mechanism comprising:

- A cam (254) rotatably fixed on a pivot (252)
- a slidable bearing member (228) having a surface (258) engaging said cam and an opposite surface slidingly engaging an abutment (246);
- wherein one of said cam and said slidable bearing member includes a protuberance (260) and the other of said cam and said slidable bearing member includes a corresponding indentation (262) which forms a perpetual join with said protuberance.

Regarding claim 23, Miotto discloses a chair adjustment mechanism comprising:

- A cam (254) rotatable between a first position (Fig 9) and a second position (Fig 10);
- a bearing member (228) perpetually bearing against said cam;

-a join between the cam and bearing member, maintained for all positions of said cam, such that, due to said join, rotation of the cam between the first and second positions translates the bearing member. (shown by figures 9 and 10)

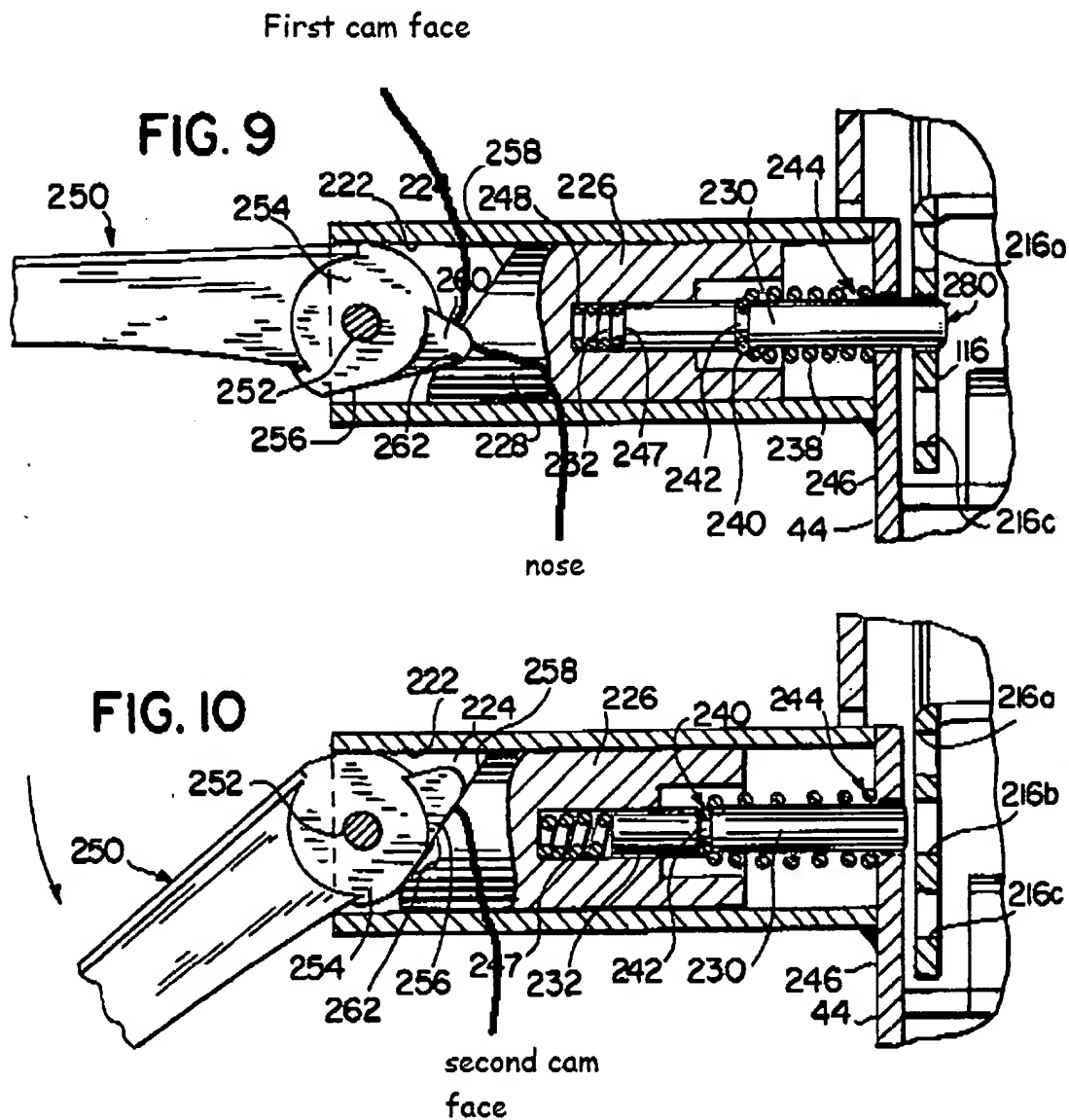
Regarding claim 24, the join comprises an indentation (262) on the bearing member and a protuberance (260) on the cam.

Regarding claim 25, the cam has a nose, the protuberance is located at the nose.

Regarding claim 26, an abutment (246) is perpetually bearing against a side of the bearing member opposite the cam, translation of the bearing member resulting in the bearing member sliding against the abutment member. The limitation that the translation results in the bearing member sliding against the abutment is considered functional language. The device is capable of performing the claimed function. See MPEP 2114).

Regarding claim 27, the bearing member is a bearing plate.

Regarding claim 28, when the cam is in the first position, a first cam face abuts the bearing plate, when the cam is in a second position, a second cam face abuts the bearing plate, said nose being between the first and second cam faces. (see Figure below)



Regarding claim 29, the cam is rotatably fixed on a pivot (252).

Regarding claim 30, the bearing member has a surface (258) engaging the cam and an opposite surface slidingly engaging an abutment.

Claims 23, 29, and 30, 8-12, and 14-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Pernicka (US Patent 5,676,425).

Regarding claim 23, Pernicka discloses a chair adjustment mechanism comprising:

- A cam (76) rotatable between a first position (fig 4) and a second position (fig 5) ;

- a bearing member (94) perpetually bearing against said cam;

- a join (77) between the cam and bearing member, maintained for all positions of said cam, such that, due to said join, rotation of the cam between the first and second positions translates the bearing member.

Regarding claim 29, the cam is rotatably fixed on a pivot (84).

Regarding claim 30, the bearing member has a surface engaging the cam and an opposite surface slidably engaging an abutment (94).

Regarding claim 8, a compression member (54) is arranged to bias the cam against the slidable bearing member, and said slidable bearing member against the abutment.

Regarding claim 9, a support wall (18) retains the abutment in position.

Regarding claim 10, the compression member receives the pivot and is biased relative to the support wall to bias the cam against the slidable bearing member and the slidable bearing member against the abutment.

Regarding 11, the compression member is biased away from the support wall by a spring (72).

Regarding claim 12, the compression member is movable by rotation of the cam and compression member is arranged to switch a mechanism upon such movement.

The device's arrangement to switch a mechanism is considered functional language. The device of Pernicka is capable of performing this function and in fact, does perform this function. See MPEP 2114.

Regarding claim 14, the bearing member comprises a slidable bearing plate.

Regarding claim 15, the cam includes first and second faces (78, 80), and the first and second rotational positions are defined by engagement of the first and second cam faces with the bearing member, forming first and second positions, respectively.

Regarding claim 16, a compression member (54) is arranged to bias the cam against the slidable bearing member, and said slidable bearing member against the abutment.

Regarding claim 17, a support wall (18) retains the abutment in position.



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Regarding claim 18, the compression member receives the pivot and is biased relative to the support wall to bias the cam against the slidable bearing member and the slidable bearing member against the abutment.

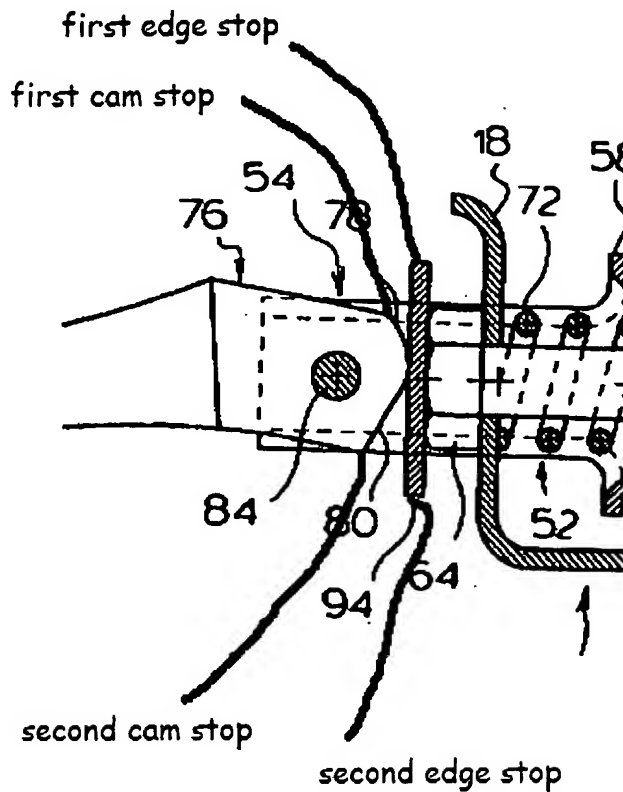
Regarding claim 19, the compression member is movable by rotation of the cam and compression member is arranged to switch a mechanism upon such movement.

The device's arrangement to switch a mechanism is considered functional language. The device of Pernicka is capable of performing this function and in fact, does perform this function. See MPEP 2114.

Regarding claim 20, the slidable bearing plate includes first and second edge stops capable of being configured to define sliding limits for the slidable bearing plate.

Regarding claim 21, first and second cam stops are arranged to define a first and second rotational limit by engaging the edge stops.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pernicka (US Patent 5,676,425) in view of Miotto (US Patent 6,213,522).

Pernicka discloses a chair adjustment mechanism comprising:

- A cam (76) rotatably fixed on a pivot (84)

- a slidable bearing member (94) having a surface engaging said cam and an opposite surface slidably engaging an abutment (64);

-Pernicka does not disclose one of said cam and said slidable bearing member includes a protuberance (260) and the other of said cam and said slidable bearing member includes a corresponding indentation (262) which forms a perpetual join with said protuberance.

Miotto teaches one of said cam and said slidable bearing member includes a protuberance (260) and the other of said cam and said slidable bearing member includes a corresponding indentation (262) which forms a perpetual join with said protuberance to serve a locking function.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a protuberance into the cam or slidable bearing member and a corresponding indentation into the other of the cam or slidable bearing member to serve a locking function.

Regarding claim 2, a compression member (54) is arranged to bias the cam against the slidable bearing member, and said slidable bearing member against the abutment.

Regarding claim 3 a support wall (18) retains the abutment in position.

Regarding claim 4, the compression member receives the pivot and is biased relative to the support wall to bias the cam against the slidable bearing member and the slidable bearing member against the abutment.

Regarding 5, the compression member is biased away from the support wall by a spring (72).

Regarding claim 6, the compression member is movable by rotation of the cam and compression member is arranged to switch a mechanism upon such movement.

The device's arrangement to switch a mechanism is considered functional language. The device of Pernicka is capable of performing this function and in fact, does perform this function. See MPEP 2114.

#### ***Allowable Subject Matter***

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed October 25, 2006 have been fully considered but they are not persuasive.

Regarding claim 1, applicant argues that the a perpetual join is not formed in the device of Miotto.

If applicant contends that corner-to-corner contact constitutes "perpetual" joining as shown in figure 2b of the instant application, the device of Miotto satisfies

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this relationship as shown in figure 10, where the protuberance contacts the corner of the indentation.

Regarding claim 23, applicant argues that Miotto does not operate in the same way as the device in the instant application.

Determination of patentability in device claims is based on the claimed structure of the device, and not its mode of function. The fact that Miotto may or may not operate in exactly the same way is insufficient to overcome the rejection. The examiner regards applicant's amended language as a functional recitation of how the device functions (See MPEP 2114) and does not alter the structure of the device. Miotto anticipates all of the structure claimed, and therefore the rejection stands as proper.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6,394,550 discloses a chair adjustment mechanism having a cam connected with a handle, the handle having first and second stops and in connection with the flanges on the housing member guard any gap from being formed between the bearing plate and the cam, however does not provide any motivation as to why one of ordinary skill in the art would incorporate the flanges into the bearing member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Krause whose telephone number is 571-272-3012. The examiner can normally be reached on Monday - Friday, 7:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMK  
1/8/06



RICHARD RIDLEY  
SUPERVISORY PATENT EXAMINER